IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 276 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

BROACH TEXTILE MILLS LTD

Appearance:

MR BB NAIK for MANISH R BHATT for appellant

NOTICE SERVED for the respondent

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 07/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

At the instance of the Revenue, the Income-tax Appellate Tribunal, Ahmedabad, Bench 'A' has referred the following question of law for the opinion of this Court in respect of A.Y. 1977-78 :-

"Whether,in law and on facts, the Appellate Tribunal is right in holding that depreciation and investment allowance should be allowed without deducting the value of subsidy amounting to Rs. 2,15,053/- from the value of the total assets, as provided under section 43 of the Income-tax Act, 1961 ?"

2. We have heard the learned counsel for the Revenue. Though served, no one appears on behalf of the respondent. The learned counsel for the Revenue fairly states that the question referred to us for our opinion is squarely covered by the decision of the Supreme Court in COMMISSIONER OF INCOME-TAX v. P.J.CHEMICALS LTD. (1994) 210 ITR 830. In the said decision, the Supreme Court has ruled that where Government subsidy is intended as an incentive to encourage entrepreneurs to move to backward areas and establish industries, the specified percentage of the fixed capital cost, which is the basis for determining the subsidy, being only a measure adopted under the scheme to quantify the financial aid, is not a payment, directly or indirectly, to meet any portion of the 'actual cost' and the expression 'actual cost' in section 43(1) of the Income-tax Act, 1961, should be interpreted liberally because subsidy does not partake of the incidents which attract the conditions for its deductibility from 'actual cost'. According to the Supreme Court, the amount of subsidy is not to be deducted from the 'actual cost' under section 43(1) for the purpose of calculation of depreciation etc.

3. In view of the principles laid down by the Supreme Court in the above quoted decision as well as the findings recorded by the Commissioner of Income-tax (Appeals) and the Tribunal, we are of the opinion that the Appellate Tribunal is right in holding that the depreciation and investment allowance should be allowed without deducting the value of subsidy amounting to Rs. 2,15,053/- from the value of the total assets as provided under section 43 of the Income-tax Act, 1961. The question is, therefore, answered in the affirmative i.e. in favour of the assessee and against the Revenue. The Reference accordingly stands disposed of with no order as to costs.

(J.M.Panchal,J.)

(M.S.Shah, J.)

(patel)